

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1477 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHAI NIHALCHAND MODH

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioner
MR. S.K. PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 31/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the order passed by the District Supply Officer, Palanpur dated 4.7.1987 at Annexure-A to the petition and partly confirmed by the State Government vide its order dated 1.8.1988 at

Annexure-B to the petition.

2. The case of the petitioner was that he was holding a wholesale licence as producer as well as dealer in edible oil and oil seeds. The licence was valid upto 31.12.1986. It was granted in accordance with the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as 'the Order'). The allegation levelled against the petitioner was that on 5.5.1987, when the supply Inspector of Plananpur Division inspected the business premises of the petitioner Bhagavanbhai Nihalchand Modh, the owner of the petitioner firm was present and in his presence, the premises were inspected and certain irregularities were found. It was stated that the licence was valid upto 31.12.1986 and was not got renewed thereafter. In view of the above fact, the quantity as mentioned in the order was seized. A notice was issued under Section 6B of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') asking the petitioner to show cause as to why the commodities should not be confiscated.

3. In pursuance of the said notice a reply was submitted by the petitioner and it was contended that there was a bona fide mistake on the part of the petitioner in not getting the licence renewed. The licence was, however, thereafter renewed within a very short period with effect from 1.6.1987. It was also stated that no any other illegality or irregularity was committed by the petitioner either in any transaction at the time when the inspection took place or even in the past. A prayer was, therefore, made to withdraw the notice.

4. Considering the facts and circumstances of the case and taking into account the admission made by the petitioner that there was a mistake on his part in not getting the licence renewed, the District Supply Officer held the irregularity proved. He, therefore, ordered confiscation of the entire commodities.

5. Being aggrieved by the above order, an appeal was filed by the petitioner which came up for hearing before the Deputy Secretary, Civil Supply Department. It was argued before the Government that there was no illegality or irregularity and at the most there was an error, and that too, a bona fide error on the part of the petitioner in not getting the licence renewed. The Government considered the said point and partly allowed the appeal. In the opinion of the Government, as no disadvantage was

taken by the petitioner and the error was not serious in nature, interest of justice would be met if liberal view was taken. The appeal was partly allowed and instead of 100% confiscation, 50% of the goods were ordered to be confiscated and the rest of the goods were released. Against the said order, the present petition was filed.

6. Rule was issued and interim relief was granted. The matter is called out for final hearing today.

7. I have heard Mr. Acharya for the petitioner and Mr. S.K. Patel, Id. AGP, for the State. (i) Mr. Acharya contended that both the authorities below have committed an error of law in holding that the licence was required. He submitted that a licence would be required if the case falls within the mischief of Clause 3 of the 1981 Order which provides that no person shall carry on business as a dealer if the stock of the essential article in his possession "at any time" exceeds quantities specified in the table. He submitted that the petitioner did not possess at a time quantities specified in the table and hence no licence was required.

(ii) The authorities have committed an error of law in holding that the period of licence expired on 31.12.1986. Mr. Acharya submitted that in the instant case Clause 5 would apply and the licence would be deemed to continue upto next year, i.e. upto 31.12.1987, in view of the fact that it was granted in March, 1982. The authorities ought to have appreciated the above fact and ought not to have taken any action on the ground that the petitioner had no licence.

(iii) Only the Collector is authorised to take action under Section 6A of the Act and the District Supply Officer has no power, authority or jurisdiction to initiate proceedings or to pass order. Since the order was passed by the District Supply Officer, it was null and void and without jurisdiction. As the original order was null and void, the order passed by the State Government in appeal was a stillborn order. No right accrued in favour of the State Government and no liability arose against the petitioner.

(iv) At the most the authorities could have exercised power under Clause 10 of 1981 Order which provides for forfeiture of security deposit and no part of essential commodity could be confiscated.

(v) Even if this court is of the view that there was

a breach of the Control Order, the breach was technical and trivial in nature and confiscation to the extent of 50% was grossly disproportionate and excessively high and deserves to be interfered with by this court.

8. Mr. Patel, learned A.G.P. on the other hand, supported the order passed by the authorities below. He submitted that several contentions taken by the learned advocate for the petitioner before this court were not taken before the authorities below. They are not "pure question of law" and cannot be allowed to be raised in a petition under Article 226/227 of the Constitution of India. He submitted that in light of the facts and circumstances of the case, the authorities have passed an order and State Government was satisfied that liberal view was required to be taken and ordered 50% of confiscation of the goods. It cannot be said that there was any jurisdictional error which requires to be interfered with by this court. He, therefore, prayed that the petition deserves to be rejected.

9. In the facts and circumstances of the case, in my opinion, the petition deserves to be partly allowed. So far as the first contention is concerned, it cannot be said to be pure question of law. Requirement of licence is, no doubt, necessary under the Control Order in certain cases. But whether at a particular time a person was in possession of a particular quantity or not is a pure question of fact. Such question, therefore, must be decided in the evidence of the case by raising at appropriate level and on that basis a finding ought to have been called for. Since point was not raised, it cannot be permitted to be raised for the first time in this court.

10. So far as the second point is concerned, i.e. the period of licence, the authorities have stated that in the licence, which was granted to the petitioner in the prescribed form under the Control Order, 1981, the terms and conditions were mentioned. A specific finding is recorded to the effect that one of the terms specifically stated that the licence was valid upto 31.12.1986. It is an admitted fact that the inspection took place in May, 1987 whereas the licence was got renewed with effect from 1.6.1987. It is, therefore, clear that the day on which inspection was carried out in May, 1987, there was no valid licence which was subsequently renewed with effect from 1.6.1987. In the circumstances, it cannot be said that the authorities below have committed an error in recording that there was no licence in May, 1987.

11. Regarding power of the District Supply Officer, my attention was invited to the provisions of Section 6A of the Act which states that the Collector can pass an order for confiscation of seized commodities. Now apart from the fact that even that argument was not advanced before the authorities below, Section 2 of the Act defines the term "Collector" which is inclusive in nature and the word 'Collector' includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under the Act. In view of the above fact, it cannot be said that District Supply Officer has no power, authority or jurisdiction to issue notice. That contention has, therefore, no force.

12. So far as Clause 10 of the Control Order is concerned, the submission is not well founded. Clause 10 is merely an enabling provision which permits the authorities to forfeit security deposit. Regarding confiscation of goods, there is a specific provision in the parent Act i.e. the Essential Commodities Act which is in Section 6A. It provides for confiscation of goods and hence the above action could have been taken by the authorities and accordingly action was taken. I do not find any infirmity in invoking the provisions of Section 6A of the Act and in passing order regarding confiscation of seized goods.

13. The final submission, however, deserves serious attention. It was submitted that there was some error on the part of the petitioner in not getting the licence renewed as he was of the opinion that since the licence was granted in March, 1982, it would remain valid and operative upto December, 1987 particularly in light of the phraseology used in Clause 5 of the Control Order. It is no doubt, true that there was an error on the part of the petitioner in understanding it and in construing the above provision when one of the terms and conditions itself provided that it would be valid upto 31.12.1986 but there is no allegation that the petitioner had disposed of any commodity by taking undue advantage of the situation or by blackmarketing it. Thus, there was non-compliance with the provisions of the Control Order on the part of the petitioner. In the facts and circumstances, however, when no allegation whatsoever was made against the petitioner that he had taken any undue advantage of the situation or he has disposed of any commodity otherwise than in accordance with law and non-renewal of the licence was the only irregularity

alleged to have been committed by the petitioner, in my opinion, ends of justice would be met if instead of 50%, only 10% of the commodity is ordered to be confiscated and the remaining commodity and/or in lieu thereof the amount which has been realised at the relevant time will be repaid to him. For such technical and trivial error, a liberal view should be taken in light of a decision of the Hon'ble Supreme Court in N. NAGENDRA RAO & CO. VS. STATE OF A.P. reported in AIR 1994 SC 2663.

For the foregoing reasons, the petition is partly allowed and instead of 50%, only 10% of the goods is ordered to be confiscated and the remaining commodity and/or in lieu thereof the amount which has been realised at the relevant time is ordered to be refunded to him. The petition is disposed of accordingly. Rule is made absolute with no order as to costs.

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